

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7479 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SARVAJANIK KELAVANI MANDAL

Versus

STATE OF GUJARAT

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Appearance:

MR AD OZA for Petitioner

MR MUKESH A PATEL for Respondent No. 1 and 2

None present for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/01/99

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Vide letter dated 12th August, 1994, the respondent No.2 conveyed to the petitioner that proposal for starting of new classes of higher secondary in science stream is under active consideration and the

petitioner was called upon to file affidavit to the effect that it would not claim grant and abide by all other rules. The petitioner filed an application for reconsideration of this decision. It is not in dispute that vide letter dated 27-3-1995, the respondents have declined to grant permission to the petitioner to open new classes of higher secondary in science stream. He made a request for reconsideration of the decision aforesaid but that has also been turned down by the letter dated 1-8-1995. Against these two orders of the authorities, the petitioner has not taken any legal remedy either by filing suit in the civil court or by approaching to this court under Article 226 or 227 of the Constitution.

3. Vide advertisement dated 22-2-1996, Joint Director of Education invited applications for opening of new classes in higher secondary in science stream. It is the case of the petitioner that in response to the said advertisement it applied for grant of permission to open new classes in higher secondary in science stream. Under the letter dated 12-7-1996 the authorities called upon certain queries from the petitioner which have been replied vide its letter dated 2-8-1996.

4. In this special civil application, the petitioner has prayed for quashing and setting aside of the impugned order of the respondent-authorities refusing to grant permission to the petitioner to start higher secondary classes in science stream.

5. This prayer, as made by the petitioner, cannot be granted for the reason that he has given up this grievance or deemed to have been given up this grievance as admittedly in response to the advertisement dated 22-2-1996 of the Joint Director of Education inviting applications for opening of new classes in higher secondary in science stream, the petitioner applied to the said authority. That decision of not granting permission to the petitioner for opening of the new classes in higher secondary in science stream with grant in aid has been taken on 22-3-1995 and review filed by it has also been dismissed on 1-8-1995 but those decisions were not challenged by the petitioner by filing of appropriate legal remedy. This writ petition has been filed only after advertisement dated 22-2-1996 and had also applied in response to the said advertisement for grant of permission for opening of new classes in higher secondary in science stream. From this conduct of the petitioner I do not consider it to be appropriate and fruitful where those orders have to be quashed by this

court in this special civil application.

6. Learned counsel for the petitioner made a grievance that the application submitted by the petitioner in response to the advertisement dated 22-2-1996 has also not been decided so far by the authorities.

7. Learned counsel for the respondents No.1 and 2 fairly conceded that in case the application of the petitioner has not been decided then the authorities shall decide the same within reasonable time.

8. I find sufficient merits in this grievance of the learned counsel for the petitioner. Once the respondents No.1 and 2 have invited the applications for grant of permission for opening of new classes in higher secondary in science stream from the open market then the matter should have been decided at the earliest. It appears that as the petitioner has filed this special civil application the respondents could not have proceeded in the matter and considered the applications for grant of permission to start classes in higher secondary in science stream. In this special civil application, I do not find that this court has granted any interim relief in favour of the petitioner. Whatever may be the reason for sitting over the applications invited vide advertisement dated 22-2-1996 by the respondents No.1 and 2 I fail to see any justification in their this action.

9. The interest of justice will be met in case this special civil application is disposed of in terms that the competent authority shall consider the applications received by it in pursuance of its advertisement dated 22-2-1996 for grant of permission for opening of new classes in higher secondary in science stream including the application of the petitioner, if any, filed by it within a period of three months from the date of receipt of writ of this order. It is expected of the competent authority not to influence by the fact that earlier the petitioner's application for grant of permission for opening of the new classes in the science stream has been rejected. It shall be open to the petitioner to make all his submissions in support of the application including the submission that it is not the case of opening of new school. Rule stands disposed of in the aforesaid terms with no order as to costs.

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